

April 30, 2012

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202-457-7535

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Application of Cellco Partnership d/b/a/ Verizon Wireless and SpectrumCo, LLC, for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses, WT Docket No. 12-4**

Dear Ms. Dortch:

The Communications Workers of America ("CWA") hereby responds to an April 25, 2012 letter filed by Applicants in the above-referenced transaction.<sup>1</sup> In that letter, Applicants react to CWA's April 20 request<sup>2</sup> detailing why it is imperative for the Commission stop the clock in order to allow CWA the opportunity for meaningful evaluation and sound analysis of the tens of thousands of documents which the Applicants recently placed into the record.<sup>3</sup> The

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<sup>1</sup> Letter from Michael Hammer, Counsel for SpectrumCo, *et al.*, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 12-4 (filed Apr. 25, 2012) ("Applicants' Response"); Bright House Networks, LLC ("BHN"), Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"), Comcast Corp. ("Comcast"), Cox TMI Wireless, LLC ("Cox"), SpectrumCo, LCC ("SpectrumCo"), and Time Warner Cable Inc. ("TWC") are collectively referred to herein as "Applicants."

<sup>2</sup> Letter from Monica S. Desai, Counsel for Communications Workers of America, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 12-4 (filed Apr. 20, 2012) ("April 20<sup>th</sup> Request"). *See also* Letter from William M. Wiltshire, Counsel for DIRECTV, *et al.* to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 12-4 (filed Apr. 24, 2012) (supporting CWA's request to the stop the clock based on similar delays and document production challenges).

<sup>3</sup> The Applicants submitted those documents in response to the Commission's March 8 request for information. *See* Letters from Rick Kaplan, Chief, Wireless Telecommunications Bureau, FCC, in WT Docket No. 12-4 dated March 8, 2012 sent to: (1) Michael Samscock, Cellco Partnership, d/b/a Verizon Wireless; (2) David Don, SpectrumCo LLC; (3) Jennifer Hightower, Cox TMI Wireless, LLC; (4) Lynn

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Applicants' Response leaves out certain details that are important for the Commission's consideration as it evaluates whether and, if so, for how long, it would be appropriate to stop the informal 180-day clock in light of the delays and difficulties encountered by CWA as it attempts to provide the Commission with meaningful comment. Specifically, CWA provides the following additional details to the representations made in the Applicants' Response:

## **I. Verizon Wireless Production**

The Applicants state the 90-100 Verizon Wireless files that CWA has thus far been unable to read were produced in response to Question 5 of the FCC Information Request in a format that the FCC specifically requested.<sup>4</sup> Even if it is correct that Verizon Wireless provided the files in a format that the FCC requested, which include ".dbf, .prj, .sbx, .sbn, .shp, and .shx," they still remain unreadable to CWA. CWA and CWA's counsel do not have the "MapInfo" or "shapefile" software which is apparently required to open these files. In order to review these files, CWA would have to purchase a license that would cost \$1,699 per person for each counsel or consultant reviewing the files.<sup>5</sup> In the interest of allowing the public the opportunity to meaningfully review, CWA respectfully requests that these files should be provided in a format readily accessible to interested parties. By providing the files in a format unreadable by most, if not all parties in the proceeding, and in a format that would cost \$1,699 per person for each license to review the response, the information becomes effectively shielded from any outside evaluation or comment.

## **II. Comcast Production**

The Applicants' Response is correct that Comcast initially provided a copy of its FCC production to CWA on March 30<sup>th</sup>. However, the Applicants' Response leaves out that Comcast's March 30<sup>th</sup> cover letter accompanying the production misidentified the format of the information produced, causing additional delay. The March 30<sup>th</sup> cover letter from Comcast

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Charytan, Vice President, Legal Regulatory Affairs and Senior Deputy General Counsel, Comcast Corporation; (5) Bright House Networks, LLC, ATTN: Cody Harrison, Sabin, Bermant & Gould LLP; (6) Steven Teplitz, Senior Vice President, Government Affairs, Time Warner Cable Inc.).

<sup>4</sup> Applicants' Response at 2.

<sup>5</sup> For example, a recent quote from Rockware, Inc. provided the following pricing information for a single user license of MapInfo: "MapInfo 11.x single user license (1yr of MATS)...\$1,699.00 each." E-mail from Jeremy Doyle, Rockware, Inc., to Patricia Lucas, Patton Boggs LLP (Apr. 26, 2012, 12:15 p.m. EST). For a quote, see <http://www.rockware.com/product/getQuote.php?id=274&version=1024>.

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counsel incorrectly stated that two discs containing electronic files and data were in “Summation format” when the data was actually in two different formats – neither of which were Summation.<sup>6</sup> CWA’s counsel relied on Comcast’s incorrect identification and expended time in attempting to ascertain why it was unable to open what it believed were Summation files. Electronic searches in Summation are more efficient than searches in PDF formats because Summation allows the user greater searching options, allows searching thousands of files by key words or concepts, and allows the user to index, filter and tag documents and conduct advanced searches, among other functions. It was only after reviewing all the data that it determined that the files were not in Summation format, but were actually in PDF format and XLS format (2,973 in PDF format and 519 in XLS format). CWA does not dispute that Comcast subsequently provided the Summation format after CWA discovered Comcast’s error. However Comcast’s error caused CWA to unnecessarily waste time and resources trying to determine how to access and read information in mislabeled formats.

### III. Time Warner Cable Production

The Applicants’ Response states that “TWC made the requested documents available to CWA on April 3.”<sup>7</sup> Applicants state that “CWA never picked up the prepared documents and did not contact TWC until April 9, when CWA apologized for the delay and renewed its request for the documents. TWC then *reassembled* the requested information and made it available within three business days.”<sup>8</sup> What Applicants leave out is that the TWC full production was never, in fact, actually ready on April 3, and that there were technical problems with the production. On April 9, when CWA counsel contacted TWC counsel about arranging pick up, TWC counsel stated they had “discovered an issue with some files in our last production and therefore need to hold off making copies for the time being.”<sup>9</sup> TWC counsel apologized for the inconvenience. When CWA counsel asked when the copies would be ready, TWC counsel responded “probably not by tomorrow.”<sup>10</sup> On April 10<sup>th</sup>, when CWA counsel inquired about picking up the

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<sup>6</sup> Letter from Brien C. Bell, Willkie, Farr & Gallagher LLP, to Jennifer Cetta, Patton Boggs, LLP (March 30, 2012).

<sup>7</sup> Applicants’ Response at 4.

<sup>8</sup> Applicants’ Response at 4 (emphasis supplied).

<sup>9</sup> E-mail from William Sloan, Latham & Watkins LLP, to Jennifer Cetta, Patton Boggs, LLP (Apr. 9, 2012, 11:49 a.m. EST).

<sup>10</sup> E-mail from William Sloan, Latham & Watkins LLP, to Jennifer Cetta, Patton Boggs, LLP (Apr. 9, 2012, 01:02 p.m. EST).



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documents on April 11, TWC counsel said, “tomorrow would be fine to pick up the drives.”<sup>11</sup> Yet on April 11, the electronic production was still not ready for CWA. TWC counsel “apologize[d] for the persistent delay on these drives,” and said it needed “one more day to sort out a technical issue.”<sup>12</sup> At that time, TWC counsel said the issue is with “electronic copies of documents,” but that counsel could provide “a hard copy of our narrative response to the FCC today if that would be helpful.”<sup>13</sup> TWC thus provided CWA only a hard copy of its unredacted Highly Confidential narrative response on April 11, almost two weeks after CWA’s March 29 request. As outlined in its April 20<sup>th</sup> Request, TWC’s first production of electronic copies (2 DVDs, one each for Confidential and Highly Confidential documents) was not available until April 12 and its second production (2 copies of 2 hard drives, again one each for Confidential and Highly Confidential documents) was not available until April 13.

#### **IV. Bright House Network Production**

On March 29, 2012, CWA requested a copy of BHN’s interrogatory responses through counsel. The Applicants’ Response leaves out that CWA counsel on March 29<sup>th</sup> also inquired when “CDs or DVDs will be available” and stated that CWA was “prepared to pay any necessary charges for those once they are available.”<sup>14</sup> BHN counsel responded that “At the moment we have no information to provide on cd or dvd. But likely will with future submissions.”<sup>15</sup> Despite CWA’s clearly stated interest on March 29 to purchase electronic data once available, BHN did not provide CWA with the documents it subsequently provided to the Commission on April 4 as it continued to provide rolling responses to the Commission’s original March 8<sup>th</sup> request. Even though CWA counsel had specifically requested the BHN electronic document production when it became available, BHN did not make its electronic documents available to CWA until April 18, and only after CWA made a second request on April 16 asking for the rest of the production that BHN had provided to the Commission in electronic format.

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<sup>11</sup> E-mail from William Sloan, Latham & Watkins LLP, to Jennifer Cetta, Patton Boggs, LLP (Apr. 10, 2012, 07:01 p.m. EST).

<sup>12</sup> E-mail from William Sloan, Latham & Watkins LLP, to Jennifer Cetta, Patton Boggs, LLP (Apr. 11, 2012, 11:13 a.m. EST).

<sup>13</sup> *Id.*

<sup>14</sup> E-mail from Jennifer Cetta, Patton Boggs LLP, to Robert Kidwell, Mintz Levin, Cohn, Ferris, Glovsky and Popeo, P.C., (March 29, 2012, 03:58 EST)(on file with author).

<sup>15</sup> E-mail from Robert Kidwell, Mintz Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to Jennifer Cetta, Patton Boggs LLP (March 29, 2012, 04:14 EST).

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Applicants also state that CWA counsel “failed to pick up the copy of the production on April 19 as scheduled, instead raising a new request for a W-9 form from BHN’s counsel prior to paying for the production copy.”<sup>16</sup> While it is true that that CWA counsel learned from its accounting department that a W-9 form from BHN counsel would be needed in order to process payment of the \$250 hard drive, BHN counsel was not forthcoming with the form. When CWA counsel initially requested the W-9 form from BHN counsel on April 19, BHN counsel did not provide the form.<sup>17</sup> After a second call on the matter in which BHN counsel did not provide the W-9 form, Patton Boggs suggested BHN counsel invoice for payment later, but BHN counsel refused to provide an invoice for later payment, and would not allow pick up of the documents without immediate remittance.<sup>18</sup> CWA counsel worked with its accounting department on April 19 to bypass the W-9 requirement temporarily in order to have a \$250 check drafted in order to secure the documents on April 20.<sup>19</sup>

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These details reflect that the cause of these delays does not “lie with CWA” as suggested by Applicants.<sup>20</sup> CWA renews its request for the Commission to stop the 180-day clock to allow for a meaningful evaluation and sound analysis of the record. In light of the delays in document production, the volume of documents recently produced, and the manner of production, including CWA’s difficulty in searching some documents without indexes or tables, stopping the clock is the only way that CWA can be afforded the opportunity to evaluate the information submitted by the Applicants in a meaningful way.

Furthermore, Applicants continued to submit fourth and fifth responses to the Commission’s March 8 Information Request as late as April 25, more than a month after the data

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<sup>16</sup> Applicants’ Response at 2.

<sup>17</sup> Telephone call from Helen Kim, Mintz Levin, Cohn, Ferris, Glovsky and Popeo, P.C., to Yosef Getachew, Patton Boggs LLP (Apr. 19, 2012).

<sup>18</sup> Telephone call from Jennifer Cetta, Patton Boggs LLP to Darren Abernethy, Mintz Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (Apr. 19, 2012).

<sup>19</sup> Following the April 20 document retrieval, the accounting department for CWA counsel contacted the accounting department for BHN counsel on April 20<sup>th</sup> and again on April 23<sup>rd</sup> to request a W-9. A W-9 form was finally produced by BHN counsel on April 26.

<sup>20</sup> Applicants’ Response at 4.

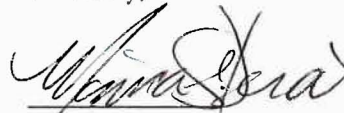
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was due to the Commission on March 22.<sup>21</sup> CWA and other parties thus need adequate time to analyze this new evidence in light of the earlier responses and as part of the overall record. In order to give the interested parties the opportunity to provide meaningful comment, the Commission should suspend the 180-day in order to allow a meaningful opportunity for all third parties to evaluate this additional information.

Sincerely,



Monica S. Desai  
Partner

*Counsel for Communications Workers of America*

cc: Adam Krinsky, Counsel to Cellco Partnership d/b/a Verizon Wireless  
J.G. Harrington, Counsel to Cox TMI Wireless, LLC  
David Don, Counsel to SpectrumCo LLC  
Michael Hammer, Counsel to Comcast Corporation  
Robert Kidwell, Counsel to Bright House Networks, LLC  
Matthew Brill, Counsel to Time Warner Cable Inc.  
James Bird, FCC  
Neil Dellar, FCC  
Joel Taubenblatt, FCC  
Sandra Danner, FCC  
Best Copy and Printing, Inc.

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<sup>21</sup> See, e.g., Letter from John T. Scott, VP and Deputy General Counsel of Verizon Wireless, to Marlene H. Dortch in WT Docket No. 12-4 (Apr. 25, 2012); Letter from J.G. Harrington, Counsel to Cox TMI Wireless, LLC, to Marlene H. Dortch in WT Docket No. 12-4 (Apr. 25, 2012).